



CHARTER COMMITTEE

AGENDA REPORT

MEETING DATE: SEPTEMBER 23, 2013

ITEM NUMBER:

SUBJECT: PROPOSED LANGUAGE GOVERNING PUBLIC CONTRACTING

DATE: SEPTEMBER 20, 2013

FROM: CHARTER COMMITTEE COUNSEL'S OFFICE

PRESENTATION BY: YOLANDA M SUMMERHILL

BACKGROUND

The Charter Committee is considering a number of proposals regarding the City's authority under public contracting. The provisions, and a further discussion of each, are set forth below. The Charter Committee must choose only one of the proposals below or no language at all in order to make a final determination as to the City's authority under public contracting.

DISCUSSION

Proposal 1

The Public Services Department shall be authorized to utilize the informal bidding procedures and cost thresholds set forth in the Uniform Construction Cost Accounting Act, as the procedures and cost thresholds may be modified every five years by the Uniform Construct Cost Accounting Commission. The City shall not be obligated to comply with any provision of the Uniform Construction Cost Accounting Act, including but not limited to future changes which relate to matters other than solicitation of bids and thresholds for informal bidding.

Proposal 2

The City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the award and performance of contracts, including contracts for the construction of public improvements, including, but not limited to, compensation paid for performance of such work.

Proposal 3

The Public Services Department will use the informal bidding procedures and cost thresholds set forth in the June 2013 Uniform Construction Cost Accounting Act (UCCAA). The Public Services Department may adopt a stricter version of the June 2013 UCCAA if the Public Services Director determines a stricter version benefits the City.

While the City will continue to use the UCCAA bidding procedures, bid threshold amounts will move with those established in the UCCAA every 5 years.

Proposal 1

The Public Services Department shall be authorized to utilize the informal bidding procedures and cost thresholds set forth in the Uniform Construction Cost Accounting Act, as the procedures and cost thresholds may be modified every five years by the Uniform Construct Cost Accounting Commission. The City shall not be obligated to comply with any provision of the Uniform Construction Cost Accounting Act, including but not limited to future changes which relate to matters other than solicitation of bids and thresholds for informal bidding.

A lengthy analysis of Proposal 1 was provided at the September 11th, 2013 Charter Committee meeting. As the Charter Committee may recall, Proposal 1 incorporates into the Charter compliance with the UCCAA as it is modified every five years for threshold changes while also giving the City discretion to opt out of the UCCAA. The language was revised, as it is written above, in which it clarified the intent in a simplified manner. Proposal 1 received support by a majority of the Charter Committee.

Proposals 2 & 3

Charter Committee members suggested that Proposal 2 be brought forward at the September 23, 2013 meeting in a revised format. The revised language is set forth in Proposal 3. The intent behind Proposal 3 is to:

- Establish a definitive marker (June 2013 UCCAA rules) that states the City WILL use formal bidding procedures drafted by the Commission. There is no open door to changes this depending on the whim of the City Council.
- Give the City some flexibility to use STRICTER thresholds as they see fit through already defined procedures set forth by the Public Works Department.
- Give the City the ability to update monetary thresholds to stay current with the times in regards to the amounts of projects. I.e., if the minimum amount for the procedures is now \$45,000, but five years from now they change it to \$50,000, the City should be able to use that new threshold without having to adhere to all the new rules/regulations.

Proposal 3 differs in a few ways from Proposal 1. First, whereas Proposal 1 gives the City the discretion to follow the formal bidding procedures under the UCCAA, Proposal 3 obligates the City to follow those bidding procedures. Second, whereas Proposal 1 is silent on the City's ability to use lower thresholds, Proposal 2 explicitly authorizes the City to use lower thresholds. In practice, however, this distinction between the two would not lead to a different result since, without this language, the

City can decide to formally bid a project even if it fits within the informal bidding threshold amounts. Thus, in practice, Proposals 1 and 3 have some fine distinctions between each other at the end of the day.

CONCLUSION

The above proposals relate to the City's authority governing public contracting. Proposal 1 had a majority support at the last meeting. Proposal 2 was also considered with the Charter Committee proposing that revisions be made and re-presented at the upcoming meeting. Proposal 3 sets forth the proposed revisions to Proposal 2. In considering Proposals 1 and 3, they are very similar with some fine distinctions. Principally, Proposal 1 provides the City with greater flexibility in following the UCCAA. Given the majority support at the prior meeting and the greater flexibility Proposal 1 provides, it is our opinion that the Charter Committee consider Proposal 1, if any, for conclusion into the draft Charter.